

Supreme Court, U. S.
FILED

SEP 3 1976

MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1976

No. **76-330**

RAY ELBERT PARKER,

Petitioner,

v.

**DANIEL J. BOORSTIN,
LIBRARIAN OF CONGRESS, et al.,**

Respondent.

**PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

RAY ELBERT PARKER
7702 Schelhorn Road
Alexandria, Virginia 22306
Petitioner Pro Se.

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PETITION FOR A WRIT OF CERTIORARI
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FOR THE DISTRICT OF COLUMBIA CIRCUIT

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

The petitioner, Ray Elbert Parker, respectfully prays that a Writ of Certiorari issue to review the judgment and final order of the United States Court of Appeals for the District of Columbia Circuit entered on June 4, 1976, and the subsequent order denying petition for rehearing entered on July 1, 1976.

OPINIONS BELOW

The opinions of the United States Court of Appeals, which are not yet reported are set out in the Appendix A hereto at page 1a. The Opinions of the United States District Court, which are not reported, are set out in the Appendix B hereto at pp. lb.¹

JURISDICTION

The jurisdiction of this Court is invoked under the provisions of 28 U.S.C. § 1254 (1), 1361, 2201, 2202 and pursuant to Rule 19(b) of the Supreme Court Rules. Petitioner believes that the issues presented to this Court involve conflict of judicial opinion between the courts on the same matters and important questions of law which have not been, but should be, settled by this Court. The final judgment of the United States Court of Appeals for the District of Columbia Circuit was entered on July 1, 1976.

QUESTIONS PRESENTED

1. Whether the Library of Congress has unlawfully abdicated and delegated to the non-federal unions legislature powers and authority which have been granted to the federal agency by the Congress of the United States of America?
2. Whether the lower courts had power and jurisdiction to grant necessary relief from deprivation of constitutionally protected liberty by federal officials enforcing

¹The final judgment of January 28, 1976, denying petition for rehearing in CA No. 75-0785 (CA No. 76-1263) cannot be set out in the Appendix B since only the date of the order was entered and not by separate order of the Court.

binding and involuntary collective bargaining scheme on non-union employees of the Library of Congress?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitution of the United States, Amendment I:

"Congress shall make no law * * * abridging the freedom of speech, * * * or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Constitution of the United States, Amendment V:

"No person shall * * * be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Constitution of the United States, Amendment IX:

"The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people."

Constitution of the United States, Amendment XIII:

"Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

Library of Congress Regulation 2026 § 3 F:

"Labor organization means a lawful organization of any kind in which employees participate and which exists for the purpose, in whole or in part, of dealing with the Library concerning grievances, personnel policies and practices, or other matters affecting working conditions of its employees."

Library of Congress Regulation 2026 § 3 L:

"Appropriate unit means a grouping of employees found to be appropriate for the purposes of collective bargaining * * *."

Library of Congress Regulations 2026 § 3 M:

"Exclusive representative means a labor organization which has been selected, in a secret ballot election, by a majority of the employees in an appropriate unit as exclusive representative of all employees."

Library of Congress Regulation 2026 § 6 B. (6):

"When a labor organization has been accorded exclusive recognition it is the exclusive representative of employees in the unit and is entitled to act for and to negotiate agreements covering all employees in the unit * * * without regard to whether or not individuals hold labor organization membership."

STATEMENT OF THE CASE

Petitioner, RAY ELBERT PARKER, an employee in good standing of the Library of Congress, instituted this action to challenge the constitutional validity of certain provisions and applications of LCR 2026 making "collective bargaining agreements" binding on non-union employees of the Library of Congress.

The provisions of LCR 2026 (as amended April 24, 1975) and all subsequent collective bargaining agreements negotiated between the government agency and organized labor purport to require and make mandatory that all federal employees negotiate grievances, adjust grievances, and arbitrate issues in dispute with the Federal agency through representatives not of their own choosing or in

the alternative that individual federal employees who are not dues paying members of the exclusive collective bargaining representative forfeit their personal rights as government employees and be *involuntarily bound* by collective bargaining agreements negotiated by the federal agency and the recognized exclusive representative chosen from the ranks of organized labor.

Petitioner is not a member or supporter of any of the unions, nor desires any form of representation by them. Notwithstanding, petitioning unions claim the authority under color of law and agency regulations to act as exclusive representative for petitioner and others, similarly situated, in "collective bargaining" with the federal agency in respect of the terms and conditions of their employment including all "due process" rights. Pursuant to this claimed authority, the unions are attempting to enter into collective agreements with the federal agency, setting out terms and conditions of employment and other matters claimed to be binding upon the employees, and threatens to negotiate further such agreements.²

Petitioner asserts that the collective bargaining representation scheme on its face and as applied by the non-federal unions and government officials, abridge, deny, disparage, and deprive petitioner and others, similarly situated, of rights, powers, privileges, equal protection and immunities guaranteed by the Constitution of the United States. The Complaint sought a declaration that the exclusive-representation schemes are

²Administrative procedures are *not* available for constitutional challenge to forced "collective bargaining" scheme between organized labor and the federal agency. In addition, the American Federation of State, County and Municipal Employees and National Federation of Federal Employees are parties to this action whose names do not appear in the caption.

constitutionally invalid, and a preliminary and permanent injunction restraining the non-federal unions and federal officials from enforcing, executing, or in any manner giving effect to those provisions of the regulations which violate of the Constitution.

REASONS FOR GRANTING THE WRIT

I.

WHETHER THE LIBRARY OF CONGRESS HAS UNLAWFULLY ABDICATED AND DELEGATED TO THE NON-FEDERAL UNIONS LEGISLATURE POWERS AND AUTHORITY WHICH HAVE BEEN GRANTED TO THE FEDERAL AGENCY BY THE CONGRESS OF THE UNITED STATES OF AMERICA

The Library of Congress, like every other federal agency, is a creature of the Congress of the United States. As such, the powers of public officials which govern the agency are fixed by statute and limited to those conferred expressly or by necessary implication. It is clear, therefore, that federal agencies themselves do not possess any inherent powers since federal agencies have only those powers expressly granted, those necessarily or fairly implied therefrom, or those that are essential and indispensable. Therefore, federal agencies can do no act, nor make any contract, nor incur any liability, that is not thus authorized. Any contract or "collective bargaining agreement" entered into by a federal agency which is not authorized by statute or law is void. Likewise, actions of a federal agency and its officials which are against public policy are void and unenforceable.

The policy of the Library of Congress under LCR 2026 can only be characterized as a "collective bargaining" policy. It clearly establishes a duty for a federal government agency to bargain with a non-federal labor organiza-

tion. Furthermore, the Policy provides for the recognition of a certain employee organization as exclusive bargaining representative for *all* employees. LCR 2026 provides that, if an employee organization receives the majority of votes in an election forced upon the employees by the federal agency, then such employee organization shall be deemed the certified exclusive representative of all the employees in the unit for the purpose of meeting and conferring with the agency concerning wages, hours and other conditions of employment. Lastly, the Policy provides that the negotiations with the exclusive bargaining representative shall result in a binding contract between the federal agency and the non-federal union. Petitioner asserts that a public agency has no legal authority to bargain or contract with a labor union in the absence of express statutory authority by Congress. *International Bro. of Elec. Wkrs. v. City of Hastings*, 179 Neb. 455, 457-58, 138 N.W.2d 822, 824 (1965).

The Congress of the United States has the right to and has determined not to recognize union representation of all public employees. In the absence of Congressional legislation, a federal agency has no authority to recognize a labor organization as exclusive representative of all its employees. It is not a matter of constitutional right, but rather legislative authority. The legislative intent of Congress is clear that federal agencies cannot independently enact a policy providing for negotiations with employee organizations, much less conduct such negotiations and embody their results into binding contracts applicable to all federal employees.

Moreover, such negotiations and contracts fly in the face of an official public policy to the contrary since Congress has not vested agencies with or allowed federal

agencies to possess any authority to recognize any labor union as an exclusive representative of all public employees, or to negotiate with any such non-governmental union(s) or its agents with respect to any matter relating to them or their employment or government service. Additionally, a *governing body cannot enter into a contract that cedes away future control or binds successors as to governmental matters.* The collective bargaining scheme entered into by the Library of Congress, however, have this very purpose and effect.

It is axiomatic that federal agencies may not delegate their legislative functions and responsibilities to third parties. The Congress of the United States is the source from which the legislation must come, not by executive order of the President of the United States. The setting of wages, hours and other terms and conditions of employment in the "public sector" is a legislative function which cannot be the subject of bargaining or contracts. *Fellows v. LaTronica* 151 Colo. 300, 305, 377 P.2d 547, 550 (1962). It is patent, however, that the Library of Congress has made the terms and conditions of federal employment in the agency a subject of bargaining and, therefore, the agency has unlawfully delegated and abdicated its legislative powers and responsibilities in that area.

Simply put, by adopting the Policy and entering into contracts under a "collective bargaining" scheme, the Library of Congress completely surrenders its ability to exercise its independent judgment and to act pursuant to its administrative authority. It has abdicated the duty to protect the public's interest. *Neither the law nor the public can or will tolerate government by private agreement and not by laws made by the representatives of the people.*

The result of this mandatory scheme is a denial of the right of a federal employees protection of his right to join or in the alternative not to join a union which may advocate policies and practices not in accordance with personal belief and conscience. Petitioner asserts that the implementation of the labor-management exclusive representation scheme will result in violation of his civil and constitutional rights as a government employee and may ultimately lead to "compulsory" union membership arrangements and immediate elimination of all redress procedures *whatsoever* unless dominated by union agreements; further, that forced unionization on federal employees may lead to (1) abuse and misuse of power; jobs and positions for political, sociological and ideological purposes; (2) gross violations of employee civil and constitutional rights; (3) violation of the "merit" principle in government service; (4) violation of existing protections against compulsory unionism; and (5) elimination of due process rights unless dominated by union agreements.

This cause of action raises numerous constitutional issues of first impression, which deal with matters of crucial importance in the field of public-sector labor relations in federal government.

II.

WHETHER THE LOWER COURTS HAD POWER AND JURISDICTION TO GRANT NECESSARY RELIEF FROM DEPRIVATION OF CONSTITUTIONALLY PROTECTED LIBERTY BY FEDERAL OFFICIALS ENFORCING BINDING AND INVOLUNTARY COLLECTIVE BARGAINING SCHEME ON NON-UNION EMPLOYEES OF THE LIBRARY OF CONGRESS

The cause of action before this Court sets forth a clear constitutional claim. The petitioner asserts that the system of exclusive representation is repugnant on its face and as applied to the United States Constitution. Under the system, the labor organization selected by a majority vote of federal public employees in an "appropriate bargaining unit" becomes the exclusive bargaining agent for all the employees in that unit with respect to the negotiations and administration of collective agreements covering terms and conditions of employment. Under the exclusive-representation scheme, public employees who are not members of the non-federal labor organization chosen as the exclusive representative are compelled to support the "collective-bargaining" activities of that organization.

The fundamental issue in this case with respect to exclusive representation is the mandatory requirement that petitioner and all non-union employees accept a designated labor organization as their "bargaining representative" for the purpose of negotiating and administering collective agreements with the federal agency. The lower courts refused judicially to notice that all unions are not mere "service" agencies, but rather are necessarily involved in political and ideological activity, or that the process of "collective bargaining" is itself a form of socio-political activism.

There is no basis for distinguishing the freedoms guaranteed under the First and Fifth Amendments from those secured by the Ninth and Thirteenth Amendments insofar as self-determination is concerned. The Founders designed all of the Bill of Rights to reflect "the inestimable worth of free choice." This claim is supported by the most fundamental presupposition of constitutional law: *viz, that individual liberty under our Constitution is reserved for autonomous exercise by individuals, and cannot be "collectivized" or otherwise made subject to "majority rule."*

In *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, the Court stated that:

"The very purpose of the Bill of Rights * * * was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech * * * and assembly, and other fundamental rights *may not be submitted to vote; they depend on the outcome of no election.*"

The conclusion that the exercise of fundamental liberty lies "beyond the reach of majorities," "may not be submitted to vote," and "depend on the outcome of no election" is a true absolute of constitutional law. There must exist some areas in which individual self-determination is secure from "majority rule" or other forms of political decision-making. Otherwise, government would logically possess unlimited power—which under our Constitution is self-contradictory and absurd.

The Library of Congress "collective bargaining" purports to create a scheme of "governmental/industrial democracy," under which a majority of the employees

within an arbitrarily defined "appropriate unit" exercise a quasi-governmental power to control the employment affairs of the dissenting minority. Exclusive representation purports to extinguish the autonomous exercise by dissenting employees of protected liberties and to replace it with a species of "collective" rule. Exclusive representation, therefore, extends "majority rule" to an area in which its application is logically incoherent and offensive to the most basic postulate of constitutional law.³

Central to the entire exclusive-representation scheme are yet other crucial First Amendment issues; the issue of freedom of speech, association and petition. The process by which public employees meet, confer, and otherwise deal with public/governmental employers in respect to the terms and conditions of their employment is a form of petitioning government. The agency regulations purports not to limit, impair or affect the right of any employee to the expression of communication, grievance, or complaint on any matter related to the conditions or compensation of public employment *so long as the same is not designed to and does not circumvent the rights of the exclusive representative.* Rather, it extinguishes constitutional liberty with respect to every matter within the "collective-bargaining" jurisdiction of the exclusive non-governmental representative by allowing the dissenting employees their freedom *only* provided that their views, grievances, complaints or opinions reinforce or complement the policies and positions of the recognized, exclusive and sole representative selected from the ranks of organized labor.

³*A.L.A. Schecter Poultry Corp. v. United States*, 295 U.S. 495; *Carter v. Carter Coal Co.*, 298 U.S. 238.

Furthermore, because the Library of Congress Regulations empowers the exclusive representative to "speak for" all the employees in its bargaining unit, it subjects non-union employees through the "collective-bargaining" process to forced petition on whatever political, sociological or ideological issues the exclusive representative chooses to pursue in the course of its "representational" activities.⁴

One of the paramount issues raised by the action is whether a government employee has a right *not* to associate with a union or any other organized group or to be involuntarily bound by its policies or collective bargaining agreements by rights and freedoms under the United States Constitution. The First Amendment guarantees not only the freedom to engage in protected activity such as freedom of association, but also the freedom *not* to do so. Indeed, the freedom to refrain from protected speech, association, or petition is entitled to an even more preferred position than to speak, associate, or petition.

Since the government itself cannot abridge First Amendment freedoms, they cannot grant the power to private non-governmental groups to abridge them. Although the right of unionization of government service is

⁴*United States v. Cruikshank*, 92 U.S. 542, 552-53 (1876); *AFSCME v. Woodward*, 406 F.2d 137 (8th Cir., 1969). "A group which attempts to organize individuals with a common outlook, to educate the public as to those individuals' interests, and to obtain privileges for those individuals from public and government is a political action organization which is intimately bound up with the political process." *Gay Students Org. of Univ. of New Hampshire v. Bonner*, 509 F.2d 652, 660 (1st Cir., 1974); *Acaufora v. Bd. of Educ. of Montgomery County*, 359 F. Supp. 843, 856 (D. Md., 1973), aff'd 491 F.2d 498 (4th Cir.), cert. den., ____U.S____, 95 S. Ct. 64 (1974).

not a constitutionally protected right, the question whether forced unionization of government employees violates an employee's "freedom of association" and "right to work" does invoke federal jurisdiction.

This Court is called upon to squarely face the issue whether compulsory use of arbitration and the mandatory use of exclusive representation schemes compromises or deprives non-union employees of "fair representation" and fundamental rudiments of "due process." The fact that LCR 2026 as applied will require the employees of the Library of Congress to accept a partisan political organization as their "spokesman" and "bargaining representative" and to *involuntarily* support its activities raises serious First Amendment questions. Any law which prevents an individual from bargaining over the terms and conditions of his own employment is also repugnant on its face to the Thirteenth Amendment. A condition of servitude exists where an employee must work under conditions fixed by others and not in any case by himself. Under the collective bargaining scheme, members of the exclusive representative exercise a monopolistic privilege to meet and confer with the federal agency and negotiate agreements which are *binding* on union and non-union employees alike.

"Exclusive representation" is a monopoly by definition: a grant of exclusive powers and privileges to certain labor organizations to negotiate terms and conditions of employment for all employees in the bargaining units, whether voluntary union members or dissenters. This grant deprives petitioner of rights and privileges which he freely enjoyed theretofore, and subjects him to union control while subordinating him to the philosophy and process of "collective bargaining" espoused and implemented by organized labor and commits him substan-

tively to whatever terms and conditions of employment and grievance-handling the labor organization deems expedient.

The acid test is whether individual liberty and rights as federal employees can be "collectivized" at all under our Constitution. This case presents the question of *whether the Library's exclusive representation scheme imposes political conformity on government employees in violation of their civil and constitutional rights*. The principle involved is fundamental and of universal application; that public powers and the public trust conferred upon a government agency and its officials *cannot* be delegated to non-governmental groups. In addition, the Library of Congress Regulations demonstrate an intentional exercise of governmental power to confer "special" privileges and rights to particular persons or, in the alternative special restrictions and burdens upon particular persons to the exclusion of other persons similarly situated.

Petitioner asserts that he has the right to accept public employment *free* from monopolistic interference by the "delegates" of governmental authority. Clearly, then, the necessary effect of the collective bargaining scheme is strongly to deter the non-union employees of the agency continued exercise of their fundamental freedom *not* to associate with a labor organization. Therefore, since the "essential inevitable effect" of LCR 2026 is to strike directly at protected liberty, the conclusion is irresistible that the regulation is solely concerned with compelling membership in public-employee labor unions and, for that reason, it would be difficult to appreciate what stands in the way of adjudging regulations having this inevitable effect invalid. Government is powerless to legislate with respect to membership in a lawful organization regardless of the governmental purpose sought to be

served. *Gibson v. Florida Legislative Investigation Comm.*, 372 U.S. 539, 565 (1963).

These issues go to the very heart of our constitutional system, and touch upon the most fundamental liberties it protects. To condition public employment in such a way that the personal rights and services of one man is disposed of for purposes of group benefit and group control clearly violates the right of equality of opportunity in public employment, or in the alternative unconstitutional "compulsion."

CONCLUSION

For the above reasons, a Writ of Certiorari should issue to review the judgment and opinion of the United States Court of Appeals for the District of Columbia Circuit.

Respectfully submitted,

RAY ELBERT PARKER
7702 Schelhorn Road
Alexandria, Virginia 22306

Petitioner Pro Se.

AFFIDAVIT AND CERTIFICATE OF COUNSEL

I, RAY ELBERT PARKER, Petitioner Pro se in the above entitled cause of action, do hereby certify that the foregoing Petition For A Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit is presented in good faith and not for purposes of delay.

RAY ELBERT PARKER
7702 Schelhorn Road
Alexandria, Virginia 22306

Petitioner Pro Se

APPENDIX

APPENDIX A

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

No. 76-1135

September Term, 1975
Civil Action 75-0798

Ray Elbert Parker, individually,
and on behalf of others similarly
situated,

Appellant

v.

Daniel J. Boorstin, Acting (sic) Librarian
of Congress, et al.

AND CONSOLIDATED CASES: 76-1180
and 76-1263

Before: Wright and Robinson, Circuit Judges

O R D E R

On consideration of appellant's petition for rehearing,
filed June 17, 1976, it is

ORDERED by the Court that the aforesaid petition
for rehearing is denied.

Per Curiam

For the Court:
GEORGE A. FISHER, Clerk

By: /s/ Robert A. Bonner
Robert A. Bonner
Chief Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 76-1135

September Term, 1975
Civil Action 75-0798

Ray Elbert Parker, individually
and on behalf of others similarly
situated,

Appellant

v.

Daniel J. Boorstin, Acting (sic) Librarian
of Congress, et al.

No. 76-1180 Civil Action 75-284

Ray Elbert Parker, individually and
on behalf of others similarly situated,

Appellant

v.

Daniel J. Boorstin, Acting (sic) Librarian of
Congress, Library of Congress, et al.

No. 76-1263 Civil Action No. 75-785

Ray Elbert Parker,

Appellant

v.

Daniel J. Boorstin, et al.,

Appellees

BEFORE: Wright and Robinson, Circuit Judges

O R D E R

On consideration of appellant's motion to advance cases on docket, of appellees' motions for summary affirmance, of appellant's motions for preliminary injunction and for temporary restraining order to maintain the *status quo*, and of the response filed with respect to the motions for summary affirmance, it is

ORDERED by the Court that appellees' aforesaid motions are granted and the orders of the District Court appealed from herein be, and the same hereby are, affirmed.

IT IS FURTHER ORDERED by the Court that appellant's aforesaid motions are denied as moot.

Per Curiam

APPENDIX B**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

RAY ELBERT PARKER,)
Plaintiff,)
v.) Civil Action
) No. 75-284
JOHN G. LORENZ, et al.,)
Defendant.)

RAY ELBERT PARKER,)
Plaintiff,)
v.) Civil Action
) No. 75-798
JOHN G. LORENZ, et al.,)
Defendants.)

O R D E R

Upon consideration of plaintiff's motion for oral argument and to amend this court's order of October 8, 1975 which dismissed these actions, and the opposition thereto, and also upon consideration of defendants' motion for a protective order, and it appearing to the court that its Memorandum and Order filed on October 8, 1975 reviewed all the facts and issues as they were presented at that time and fully considered plaintiff's contentions, and it also appearing that no proper grounds have been shown to amend said Order to allow plaintiff to introduce new issues into a dismissed action, it is by this court this 23rd day of December, 1975,

ORDERED that plaintiff's motion be, and the same hereby is, denied; and it is further

ORDERED that defendants' motion for a protective order preventing plaintiff from undertaking any discovery in these cases be, and the same hereby is, granted.

/s/Thomas A. Flannery
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RAY ELBERT PARKER,)
Plaintiff,)
v.) Civil Action No.
) No. 75-0785
JOHN G. LORENZ, et al.,)
Defendants.)

ORDER

Upon consideration of the complaint, Motion of Defendants To Dismiss The Action, pursuant to Rule 12(b)(1), Federal Rules of Civil Procedure, the memoranda and exhibits in support thereof and in opposition thereto, it is by this Court this 20th day of October, 1975, without a hearing pursuant to Local Rule 1-9(e),

ORDERED, that defendants' Motion to Dismiss be and the same hereby is granted; and it is

FURTHER ORDERED, that plaintiff's complaint be and the same hereby is dismissed with prejudice.

/s/William B. Jones
CHIEF UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RAY ELBERT PARKER,)
Plaintiff,)
v.) Civil Action
) No. 75-284
JOHN G. LORENZ, et al.,)
Defendants.)

RAY ELBERT PARKER,)
Plaintiff,) Civil Action
v.) No. 75-798
JOHN G. LORENZ, et al.,)
Defendants.)

ORDER

These matters came before the court on defendants' motions to dismiss pursuant to Federal Rule of Civil Procedure 12(b). For the reasons stated in the accompanying Memorandum, it is by this court this 8th day of October, 1975,

ORDERED that defendants' motions be, and the same hereby are, granted; and it is further

ORDERED that plaintiff's complaints be, and the same hereby are, dismissed.

/s/Thomas A. Flannery
UNITED STATES DISTRICT JUDGE
